

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO
THE MAINE RULES OF APPELLATE PROCEDURE

2012 Me. Rules 13

Effective: September 1, 2012

All of the Justices concurring therein, the following amendment to the Maine Rules of Appellate Procedure is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in understanding of the amendment, an Advisory Note appears after the text of the amendment. The Advisory Note states the reason for recommending the amendment, but the Advisory Note is not part of the amendment adopted by the Court.

1. Rule 23 of the Maine Rules of Appellate Procedure is amended to read as follows:

**RULE 23. REVIEW OF DECISIONS OF THE WORKERS'
COMPENSATION BOARD AND ~~HEARING OFFICERS~~ APPELLATE
DIVISION**

(a) When and How Taken. A party in interest may seek review by the Law Court of a decision of the Workers' Compensation Board or its Appellate Division ~~one of its hearing officers~~ by filing with the Clerk of the Law Court a copy of the decision within 20 days after receipt of notice of the filing of the decision by the Appellate Division hearing officer or the Board. The party in interest shall also pay to the Clerk of the Law Court the required filing fee. The petitioner shall file with the copy of the decision a notice of appeal indicating the points intended to be addressed on appeal. Any other party in interest may, within the original 20 days after receipt of notice or within 14 days after the date of the first filing of a notice of appeal with the Clerk of the Law Court, file a notice of appeal indicating any other point they may wish to address in an appeal. ~~A copy of the decision being appealed and any letter or notice filed with the Law Court shall also be served on the General Counsel of the Board.~~

When more than one party files a notice of appeal, the party who files the first notice of appeal shall be deemed to be the petitioner for purposes of application of this rule.

(b) Petition for Appellate Review and Response.

(1) *Form of Petition.* Within 20 days of the filing of the decision or the last filed, timely notice of appeal, the petitioner shall file with the Clerk of the Law Court 10 copies of a petition for appellate review, which shall state in no more than 10 pages the procedural and factual history of the case, the error alleged to have been committed and the manner in which the petition meets the criteria for granting appellate review stated in paragraph (2). The petition for appellate review and any response shall be typed in at least 12-point type with double spacing between each line of type except for quotations. Both the petition and response shall be in a single document not exceeding 10 pages.

(2) *Review Criteria.* The Law Court may grant a petition for appellate review when:

(A) The case cleanly raises an important question of law that should be addressed because (i) the question of law is one that is likely to recur unless resolved, or (ii) there is a need to consider establishing, implementing or changing an interpretation of law; or

(B) The decision on appeal contains a substantial error on a question of law resulting in substantial prejudice to one or more of the parties to the Board proceeding; or

(C) The decision on an appeal is based on a substantial and prejudicial violation of the statutory or due process procedural rights of one or more of the parties to the Board proceeding.

(3) *No Appeal of Fact-Finding.* As provided by statute, there shall be no appeal upon findings of fact.

(4) *Petition Attachments.* There shall be appended to the petition for appellate review, a copy of the decision of the Appellate Division ~~hearing officer~~ or Workers' Compensation Board, and copies of any other relevant decisions of the Board, the Appellate Division, or the former Workers' Compensation Commission

that are necessary to evaluate the issues raised in the petition. Failure to attach a copy of the challenged decision of the Appellate Division ~~hearing officer~~ or the Workers' Compensation Board to a petition for appellate review may result in a summary dismissal of that petition.

(5) *Response*. Within 14 days any other party in interest may file with the Clerk of the Law Court 10 copies of a response to the petition for appellate review. The response may not exceed 10 pages.

(6) *Service of Copies*. At the time of filing of a petition for appellate review or the response thereto, the party filing the petition or response shall also file one copy with the General Counsel of the Workers' Compensation Board and serve one copy on each of the other parties in interest.

(c) Granting or Denying the Petition for Appellate Review. The petition for appellate review shall be granted or denied as provided in 39-A M.R.S.A. § 322(3). If the petition is granted, the order granting the petition shall be treated as the notice of appeal, the petitioner shall be treated as the appellant, and the appeal shall proceed in accordance with these Rules as applicable to an appeal in a civil action; except that:

(1) In cases when the legal error is apparent on the face of the decision of the ~~hearing officer~~ Appellate Division or the Board, the Law Court may summarily modify or vacate the decision and remand to the Board for further proceedings.

(2) When the appeal is from a decision of the Appellate Division ~~a hearing officer~~ of the Workers' Compensation Board issued pursuant to 39-A M.R.S.A. § ~~318~~ 321-B:

(A) the appellant shall prepare the record on appeal and file the record with the eClerk of the Law Court within 35 days after the date the petition is granted;

(B) the appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days of the filing of the record on appeal with the eClerk of the Law Court;

(C) either party may file a reply brief within 14 days after service of the brief of the other party;

(D) the record on appeal shall consist of the Appellate Division's docket sheet, the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer or the Appellate Division has taken judicial notice, a copy of the decision of the Appellate Division, and a copy of the decision and findings of the hearing officer.

(3) When the appeal is from a decision of the Workers' Compensation Board issued pursuant to 39-A M.R.S.A. § 320:

(A) the Executive Director of the Workers' Compensation Board shall file the record on appeal with the eClerk of the Law Court within 14 days after the date the petition is granted;-

(B) the appellant shall file the appendix to the briefs, and both of the parties shall file their briefs, within 14 days after the petition is granted;

(C) either party may file a reply brief within 14 days after service of the brief of the other party;

(D) the record on appeal shall consist of the hearing officer's docket sheet, all pleadings, transcripts of all proceedings, all exhibits, all evidence of which the hearing officer has taken judicial notice, and copies of the decision and findings of the hearing officer and the decision of the Board.

(4) If, after granting a petition for appellate review and after consideration of the briefs and any oral argument, the Law Court is of the opinion that the criteria stated in paragraph (b)(2) have not been met and that the petition was improvidently granted, the Law Court may dismiss the appeal.

Advisory Note

Effective September 1, 2012, the Workers' Compensation Act has been amended by P.L. 2011, ch. 647, §§ 19-21. The amendment creates an Appellate Division within the Workers' Compensation Board and requires that parties seeking to challenge a decision of a single Workers' Compensation Board Hearing Officer bring the appeal first to the Appellate Division. There is no longer the capacity to bring a direct, discretionary appeal to the Law Court from a decision of

a single hearing officer. Appeals to the Law Court from the Appellate Division or the Workers' Compensation Board would continue to be brought as discretionary appeals according to the same discretionary review process as has existed in the recent past. The amendments to Rule 23 accommodate these statutory changes. It should also be noted that the last sentence in subdivision (a) of the present rule was duplicated in subdivision (b)(6). Accordingly, the sentence in subdivision (a) is eliminated.

The transition provision recognizes that there may be some appeals from hearing officer decisions published before September 1. The process that applied before adoption of these amendments would apply to appeals of such decisions. It would be anticipated that when a hearing officer issues a decision before September 1, but decides a motion to reconsider, a motion to amend, or a request for further findings after September 1, the new practice of appeal to the Appellate Division would govern appeals of such hearing officer rulings.

2. These amendments shall be effective and shall govern appeals from hearing officer, Appellate Division, or Workers' Compensation Board decisions published on and after September 1, 2012. Final decisions published before September 1, 2012, and not subject to post-decision motions pending on or filed after September 1, 2012, may be appealed pursuant to these Rules as in effect before September 1, 2012.

Dated: August 2, 2012

FOR THE COURT¹



LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
JON D. LEVY
WARREN M. SILVER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
Associate Justices

¹ This Rules Amendment Order is approved after conference of the Court, all Justices concurring therein.